

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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WISCONSIN ENERGY	:	
CORPORATION, INTEGRYS	:	
ENERGY GROUP, INC, PEOPLES	:	
ENERGY, LLC, THE PEOPLES GAS	:	
LIGHT AND COKE COMPANY,	:	
NORTH SHORE GAS COMPANY,	:	
ATC MANAGEMENT INC. and	:	
AMERICAN TRANSMISSION	:	<b>Docket No. 14-0496</b>
COMPANY LLC	:	
Application pursuant to Section 7-	:	
204 of the Public Utilities Act for	:	
authority to engage in a	:	
Reorganization, to enter into	:	
agreements with affiliated interests	:	
pursuant to Section 7-101, and under	:	
the Public Utilities Act to effectuate	:	
the Reorganization.	:	

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**REPLY BRIEF ON EXCEPTIONS OF THE  
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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Docket No. 14-0496

## REPLY BRIEF ON EXCEPTIONS OF THE

## STAFF OF THE ILLINOIS COMMERCE COMMISSION

Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to the direction of the Administrative Law Judge (“ALJ”) and Section 200.830 of the Rules of Practice (83 Ill. Adm. Code 200.830) of the Illinois Commerce Commission (“Commission”), respectfully submits its Reply Brief on Exceptions (“RBOE”) in the above-captioned matter.

## I. BACKGROUND

Evidentiary hearings were held in this matter on February 18th and 19th 2015.

Staff and the following parties submitted Initial Briefs (“IB”) and Reply Briefs (“RB”) on March 27, 2015 and April 10, 2015, respectively: the Wisconsin Energy Corporation, Integrys Energy Group, Inc., Peoples Energy, LLC, The Peoples Gas Light and Coke Company (“Peoples Gas” or “PGL”) and North Shore Gas Company (“North Shore”) (collectively “Gas Companies”), ATC Management Inc. and American Transmission Company LLC (collectively “Joint Applicants” or “JAs”); jointly, the City of Chicago (“City”) and the Citizens Utility Board (“CUB”) (i.e., “City/CUB”) and on its own, the People of the State of Illinois by Attorney General Lisa Madigan (“AG”).

The ALJ’s Proposed Order (“ALJPO”, “Proposed Order” or “PO”) was issued on May 14, 2015.

On May 26, 2015, Briefs on Exceptions (“BOE”) were filed by: Staff, JAs, CUB/City and AG.

Many of the issues raised in the parties BOEs were addressed in Staff’s IB and RB. The absence of a response to a specific issue raised in a party’s BOE, should not be construed as agreement with those positions or arguments by Staff.

## **II. ARGUMENT**

### **A. Response to AG**

- 1. The Commission should reject the proposed ICE rider and the alternative proposal to impose on the Gas Companies a one time refund to rate payers.**

The AG argues that the Commission should reduce North Shore and Peoples Gas’s rates through either the imposition of a rider or in the alternative the imposition on the Gas Companies of a one time refund to ratepayers. (AG BOE, 80-85.) The AG argues

that the Gas Companies will be experiencing significant savings post merger related to ratepayers financing the Integrys Customer Experience (“ICE”) project. (Id. at 80.) The AG concludes that “[a]doption of a one-time refund that properly credits customers for the ICE savings is a reasonable condition for approval of the merger.” (Id. at 85) The ALJPO appropriately found that the AG’s proposed rider would be a violation of the Public Utilities Act (“Act”). (ALJPO, 92.) Staff addressed the ICE rider in its IB and RB. (Staff IB, 43-45; Staff RB, 16-17.) As Staff set forth in its IB, the Commission only has the discretion to approve a rider mechanism if: (1) the cost is imposed upon the utility by external circumstances over which the utility has no control; and (2) the cost does not affect the utility’s revenue requirement. (Commonwealth Edison v. Illinois Commerce Comm’n, 405 Ill. App. 3d 389, 414 (2d Dist. 2010).) That is, a rider is only appropriate, if the utility cannot influence the cost and the expense is a pass through item that does not change other expenses or increase income. Id. With respect to the first part of the Commonwealth Edison test, the AG has failed to show that the costs related the ICE project are costs imposed by external circumstances over which NS/PGL has no control. With respect to the second part, the ICE project costs would impact NS/PGL’s revenue requirement, given that the base for determining the costs to be recovered through the rider are the costs approved in the recent NS/PGL rate cases. (AG BOE, 80-81.) (“... Mr. Effron’s proposals would permit the adjustment of rates going forward to reflect employee numbers and ICE expenses that are inconsistent with PGL and NS forecasts of these expenses included in rates set pursuant to the Commission’s order in the recent PGL and NS rate case, Docket Nos. 14-0224/0225 (cons.), in January of this year.”) Since the AG’s

ICE rider fails to meet the requirements of the ComEd test, the AG's ICE rider must be rejected.

The AG's alternative proposal, the imposition on the Gas Companies of a one time refund to ratepayers (AG BOE, 84.), would violate the rule against retroactive ratemaking and the rule against single issue ratemaking. The rule against retroactive ratemaking is that once the Commission establishes rates, the Act does not permit refunds if the established rates are too high, or surcharges if the rates are too low. (Business & Professional People for the Public Interest v. Illinois Commerce Commission, 136 Ill.2d 192, 209 (1989).) The rule against single issue ratemaking recognizes that the revenue formula is designed to determine the revenue requirement based on the aggregate costs and demand of the utility. Therefore, it would be improper to consider changes to components of the revenue requirement in isolation. (Business & Professional People for the Public Interest v. Illinois Commerce Commission, 146 Ill. 2d 145, 244 (1991)) The basis of the AG's refund is to prevent an alleged overcharge to ratepayers of certain costs recovered through the Gas Companies most recently approved rates. (AG BOE, 84.) That refund proposal clearly would be retroactive ratemaking and violate the prohibition against single issue ratemaking.

The AG did not, and cannot, provide any legal authority to support its position for the Commission to adopt an illegal rider or the imposition of an illegal one time refund to ratepayers on the Gas Companies as a condition to the merger. The AG's Exception No. 3 (IV, B, 5) and Condition No. 12 (AG BOE, Appendix B) must be rejected by the Commission.

**2. The Commission should reject the proposed cap on the fixed customer charge.**

The PO correctly rejects the AG's proposal to lower the customer charge for the Gas Companies' residential heating class to 40% of the customer's bill. The PO notes that there has been no record evidence in this docket for this proposal. (ALJPO, 88.) In the Gas Companies' 2014 rate cases, the Commission set new rates that reduced the customer charges from those set in the prior rate cases. (North Shore and Peoples Gas, ICC Order Docket No. 14-0224/14-0225 (cons.) 176, January 21, 2015.) The Commission should reject the AG's proposal to reduce the customer charge for the residential heating class to 40% of the bill because there is no case-specific evidence in this record to support the AG's proposal and the Commission should not depart from rates recently established, based upon evidence, in a rate case.

The AG argues that the PO's rationale for the conditions it accepts is selectively and inconsistently applied. (AG BOE, 75.) The AG argues that the PO adopts certain other conditions without substantial evidence to support them. The AG identifies these as conditions 37-39, which include the requirement that the JA will (1) build a state-of-the-art training facility in Chicago; (2) extend for five years PGL's funding of technical training at Dawson Technical Institute; and (3) contribute \$5 million of shareholder funds over the next five years to the PGL Share the Warmth program (Id.). However, these conditions are distinguishable from the AG's proposed condition to reduce the customer charge. The JA agreed and committed to these three conditions; however the JA did not agree nor commit to the proposal to reduce the customer charge. Further, the three conditions cited by the AG do not relate to rate design and were not recently litigated in

the Gas Companies' 2014 rate cases. Therefore, the Commission should adopt the ALJPO's reasoning and reject the AG's proposed condition to lower the customer charge for the Gas Companies' residential heating class to 40% of the bill.

## **B. Response to City/CUB**

### **1. Transition cost/savings tracking and rate treatment**

Staff does not oppose the City/CUB proposed modifications to the PO concerning the development of transition cost and savings tracking and ratemaking protocols to be approved by the Commission in a separate proceeding (City/CUB BOE, 53-54). The proposed modifications for a separate proceeding to be initiated based upon a filing to be made by the Gas Companies within 90 days after the close of the reorganization would provide definition for the method by which the Commission would determine the recoverability of transition costs to the extent savings are produced and potentially minimize issues in the subsequent rate cases. The imposition of an additional proceeding is within the Commission's discretion (220 ILCS 5/7-204(f)), and consistent with Section 7-204(b)(7) of the Act. (220 ILCS 5/7-204(b)(7).)

Consistent with City/CUB's proposal for a separate proceeding to address transition cost savings and tracking, CUB proposes modified language for Commitment 17. As discussed above, the modified Commitment 17 provides for a separate proceeding in which the Commission would approve the method by which the Gas Companies would track and report transition costs along with associated savings. The imposition of an additional proceeding is within the Commission's discretion. The results of this new proceeding might also assist the Gas Companies in meeting their burden of



proof for recovery of transition costs and assist the Commission in its review of those costs in future rate proceedings.

Related to Commitment 17 is commitment 21. City/CUB propose additional language for Commitment 21 to clarify the Gas Companies' burden of proof in order to recover transaction costs and to assist in the Commission's review of transition costs for recovery.

Staff is not opposed to the Commission adopting the proposed language modifications to Commitments 17 and 21 (City/CUB BOE, Attachment A, 4-5) which are consistent with City/CUB proposed modifications to the PO at page 73. (City/CUB BOE, 53-54.)

### III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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June 1, 2015

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